IN THE HIGH COURT OF JUDICATAURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT.

Shiv Lal & ors. vs. Rajasthan State Industrial & Miniral Development Corporation Ltd.,Jaipur & ors.

S.B.Civil Misc.Appeal No.122/84 against the order dated 1.6.1984 passed by the learned District Judge, Balotra in Civil Misc. Case No.9/1981.

Date of Judgment: August 24, 2006.

PRESENT.
HON'BLE MR. PRAKASH TATIA, J.

Mr. M.C. Bhoot for the appellant.
Mr. M.R. Singhvi for the respondent.

BY THE COURT:

Heard learned counsel for the parties.

This appeal is directed against the order of the reference court dated 1.6.1984, whereby the learned District Judge,on receipt of the reference from the learned District Collector, Balotara, upheld the order of the Land Acquisition Officer dated 22.1.1981, determining the land compensation @ Rs.200/- per bigha.

According to the learned counsel for the appellant, the learned reference court as well as the Land Acquisition Officer committed serious error of law in holding that the land in question was damaged land and was of no use and, therefore, could not have fetched the market rate more than @ Rs.200/- per bigha. It is submitted by the

learned counsel for the appellant that the compensation is required to be determined by taking into account the market rate of the land in question as on the date of notification issued under Section 4(1) of the Land Acquisition Act, in this case under the Act of 1953. The learned counsel for the appellant also submitted that the court below committed serious error of law in discarding the land cost which is proved by registered sale-deeds placed on record. The civil court also committed serious error of law in interpreting the sale-deeds. The sale-deeds placed on record by the appellant are of the land of nearby area and also of big piece of land as one of the sale-deeds, certified copy of which has been placed on record, is sale-deed for the land measuring more than 5 bighas. It is also submitted that both the sale-deeds are of the year much prior to the date of the notification issued for the acquisition of the present land.

The learned counsel for the respondent could not dispute this legal position that the land owners are entitled to compensation for their land on the basis of their land's costs on the date of notification under Section 4(1) of the Act of 1953. However, according to the learned counsel for the respondent, the sale-deeds placed on record by the appellant before the civil court were of the land situated nearby the developed land of industrial area. It is also submitted that it appears that the land sold by the sale-deeds was left out land from a developed

industrial area. Therefore, according to the learned counsel for the respondent, the sale price given in these sale-deeds cannot have any comparison with correct market value of the land which was acquired under this land acquisition. It is also submitted that the respondent produced the person who could have knowledge about the market value of the land in question and the Tehsildar stated on oath that the market value of the land in question is only Rs.150/- to Rs.200/- per bigha. It is also submitted that it was the duty of the appellant to prove the market rate of the land. In the alternative, it is submitted that the matter can be remanded to the court below, who may decide the question of fact on the basis of evidence available on record after hearing both the parties, because of the reason that the court below proceeded on wrong assumption of law and did not give finding about the land cost as on the date of notification under Section 4(1) of the Act of 1953.

The learned counsel for the appellant submitted that the documents placed on record by the appellant are the certified copies of the sale-deeds and they have wrongly been not accepted by the civil court and in fact the civil court has not applied its mind to the sale-deeds and, therefore, determined the cost too low, therefore, in case the matter is remanded to the court below, the appellant has no objection.

I considered the submissions of the learned counsel for the parties

and perused the reasons given in the impugned order dated 1.6.1984.

At the out set, it can be observed that the civil court has committed serious error of law in proceeding to determine the land cost after taking into account the land condition after flood of 1999 of the month of July whereas the notification under Section 4(1) of the Act of 1953 was issued on 8.2.1979. As per the finding recorded by the civil court itself, the flood came in the month of July, 1979, much after the date of publication of the notification under Section 4(1). Not only this, it appears from the entire order that the court below was not clear in mind, from which date the land cost should be determined. The court below observed that the flood came in the month of July, 1979, the possession of the land was taken in the month of July, 1980 and the notice under Section 17(4) was given on 14.3.1980. The court below nowhere decided that from which date the land cost has been determined.

In view of the above reasons, the appeal deserves to be allowed. Hence allowed and the order of the civil court dated 1.6.1984 is set aside. The mater is remanded to the court of District Judge, Balotra for deciding the cost of the land acquired with reference to the notification dated 8.2.1979, after taking into consideration all evidence available on record and thereafter to pass appropriate award. The matter be decided within a period of three months from the date of receipt of the record

by the court below. Both the parties are directed to appear before the court below on 18.9.2006. The record be sent forthwith.

(PRAKASH TATIA),J.

mlt.